

REMARKS

Claims 18 and 33-35 are pending in the application. New claims 33-35 have been added. Support for the new claims can be found in the specification at, e.g., page 21, lines 24-29, and page 30, line 9, to page 35, line 13. No new matter has been added.

35 U.S.C. §112, First Paragraph (Written Description)

At pages 2-4 of the Office Action, claim 18 was rejected as failing to comply with the written description requirement. According to the Office Action, "Applicant is not in possession of the claimed method, because Applicant is not in possession of the generically recited 'human AILIM.'"

Applicants respectfully traverse the rejection in view of the following remarks.

Independent claim 18 is directed to a method of preventing or treating graft versus host reaction in a subject by administering to the subject an effective amount of a composition comprising an antibody or a portion thereof that binds to "human AILIM."

Applicants contest the assertion in the Office Action that "human AILIM" is a generic term that reads on multiple sequence variants. The specification states that the term "AILIM" includes "a polypeptide having substantially the same amino acid sequence as that of AILIM of each mammal described in the references, and particularly preferably, that of human AILIM (the amino acid sequence of SEQ ID NO: 2 in JP-A Hei 11-29599, which corresponds to WO98/38216)" (specification at page 17, lines 26-30). As noted in the Office Action, the specification additionally states that the phrase "having substantially the same amino acid sequence" (which is used by the specification in the description of the term "AILIM" but not "human AILIM") encompasses variants of AILIM in which amino acids are substituted, deleted, and/or modified (specification at page 17, lines 31-35).

Applicants do not contest that the generic term “AILIM” as used in the present application encompasses multiple sequence variants.¹ However, claim 18 does not recite the unmodified generic term “AILIM” but instead recites “human AILIM.” The specification clearly refers to “human AILIM” as a single polypeptide species described in WO 98/38216 (which polypeptide species is also characterized in the present application at page 17, lines 19-25 as being “completely identical” to the molecule identified as human “ICOS” or “8F4” in the publications WO99/15553 and Nature (1999) 397:263-66). In view of the consistent reference in the specification to “human AILIM” as a single polypeptide species having a known amino acid sequence, the term clearly refers to only one polypeptide and does not read on multiple sequence variants.

An adequate written description of a biological macromolecule need not contain recitation of a sequence or structure that is already known in the art. See, e.g., Falkner v. Inglis, 448 F.3d 1357 (Fed. Cir. 2006); Capon v. Eshar, 418 F.3d 1349 (Fed. Cir. 2005). As detailed herein, the amino acid sequence of human AILIM was known in the art at the time of filing of the present application. Because the term “human AILIM” as used in claim 18 refers to a single polypeptide the sequence of which was known in the art, the written description requirement is satisfied merely by reference to “human AILIM” without need for inclusion in the claim of the amino acid sequence of the polypeptide.

In view of the foregoing, applicants respectfully request that the Examiner withdraw the written description rejection of claim 18.

¹ Applicants do not concede a lack of written description for the term “AILIM.” The issue of written description support for that term is not presented by the present Office Action since that generic term is not recited in the claims.

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Filed : December 5, 2003
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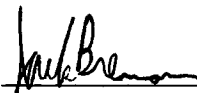
CONCLUSIONS

Applicants submit that all grounds for rejection have been overcome, and that all claims are in condition for allowance, which action is earnestly requested.

Please apply any charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 14539-005002.

Respectfully submitted,

Date: May 16, 2008



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